

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
August 28, 2014

Meeting called to order at 6:05 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Mark Alesse, Ann Grinnell, Bob Melanson, Debbie Driscoll

Members absent: Susan Tuveson

Staff: Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes: July 24, 2014

Ms. Grinnell moved to accept the minutes of July 24, 2014 as amended

Mr. Melanson seconded

Motion carried by all members present

Public Comment:

Earldean Wells:

- Contacted by Sue Johnson regarding mature street tree cutting in Admiralty Village by Navy.
- Questioned recent BoA Miscellaneous Variation for 9 Cutts Road for building within 20 feet of a wetland greater than one acre in the Shoreland Zone. She contacted the Town Manager, and noted it should have been reviewed by the Planning Board, not the BoA.

Mr. Mylroie stated there was a newspaper article regarding tree removal, noting some roots were going into the septic systems. He will look into this. Ms. Davis: Is this area still owned by the Navy or Balfour Realty? Mr. Emerson: If they're not paying taxes, perhaps Balfour is managing the buildings, but they are still owned by the Navy.

OLD BUSINESS

ITEM 1 –Brave Boat Conservation at Sawyer Lane – Cluster Subdivision —Preliminary Plan Review

Action: Hold a public hearing and grant or deny preliminary approval. Owner and Applicant Jonathon & Kathleen Watts are requesting consideration of their plans for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc. and Scott Anderson, Attorney: Realize there is additional information needed for final plan review.

Ken Markley: Summarized the proposal to date: addition of three lots with an existing single lot; 75% of total land in conservation open space; served by town water; on-site wastewater systems; wetlands located by Joe Noel; DEP visited site to determine their jurisdiction, and found no vernal pools; flood area located in open space due to culvert back-up; most of parcel is located in shoreland overlay zone, and some in resource protection; CMA has reviewed stormwater management and found acceptable, with a few comments that will be addressed.

Public Hearing opened at 6:19 p.m.

Gabrielle Burke, 139 Brave Boat Harbor Road: Has lived here for 2 1/2 years; purchased because the lot was small, but with woods behind; they have seen deer and heard owls; there is a

lot of wetland and is concerned basements will be wet with water runoff; construction will be in their backyard; seems there are a number of existing houses for sale in Kittery.

Patrick Winn, 141 Brave Boat Harbor Road: Likes the environment and wildlife; has the same issues as Gabrielle Burke; water rushes thru backyard now and with more tree cutting, it will be worse.

Daniel Moran, 139 Brave Boat Harbor Road: Property is small and is concerned about water runoff by adding three houses at a higher elevation; wants to conserve mature trees and is concerned about selective cutting that will expose remaining trees to damage and impact on their properties because of shallow tree roots.

Earldean Wells: Are the building envelopes to be clear-cut?; requested calculations of the number of diseased hemlocks removed; requests Board require additional planting if needed following removal; will the upland open space be deeded as conservation land, restricting future development;

Ken Markley:

- The building envelopes are illustrated on plan, and all cutting on the property totals less than 1 acre; cleared areas could be included in the homeowners documents; the no-cut no-disturb areas will be identified and can be marked on-site;
- Stormwater management: Stormwater plan will decrease impact on abutters with grading; calculations indicate runoff in a 2-year storm is .23 cf/sec, reduced to .19 cf/sec, a 17% decrease; in a 25-year storm, runoff is reduced to .42 cf/sec from .60 cf/sec, a 30% decrease; stormwater plan diverts runoff to wetlands, through forested areas, across grass swales to level spreaders and sub-catchment areas.
- Scott Anderson: There will be a change; development impacts are addressed through ordinance standards, such as cutting/buffers/stormwater management, showing improvements over existing conditions; only 3 additional lots, with 75% of the property set aside.

Jim Van Kennen, 19 Short Farm Road, Kittery Point: Where is the open space? Loosing idea of what cluster housing should be; issue is the southside drainage from Rt. 103 under a culvert onto the Porter property; is this a technique to increase density in a Residential Rural area that should not be increased? Previous development did not pan out, and the Board needs to address development in this area.

Mr. Markley: Wetlands, floodzones, etc. are taken out of density calculations in cluster developments; sub-catchbasin #1 will decrease flow to Brave Boat Harbor Road, other flow goes to the wetland; stormwater design will benefit Mr. Porter; project includes an undisturbed high quality wetland, and uplands are set aside.

Ms. Kalmar: Is the upland reasonably accessible, in a monetary sense?

Mr. Markley: Yes, it is accessible with a wetland crossing, but doing so impacts the wetland and changes the flow; not desirable, more expensive, but can be done.

Mr. Anderson: Mr. Watts chose to set aside the uplands and concentrate on one area, with a high quality area set aside, meeting and exceeding ordinance requirements; all conservation land will be identified and protected in homeowner's documents;

Patrick Winn: He built an addition and had to meet setbacks that the proposal does not; there are a number of homes in Kittery that remain empty, why build more?

Mr. Alesse: Mr. Porter's letter also identified flag lots.

Mr. Van Kennen: Read email from John Porter (Attached)

Mr. Emerson: Cluster zoning is allowed in Kittery in attempt to use less land area while still meeting the density requirements of the zone, while conserving large contiguous land areas, which standard subdivision design does not do.

Gabrielle Burke: Did not choose to live where houses are clustered behind her home on the only buildable area; asked the Board to consider rejecting this development proposal. Will there be another public hearing?

The public hearing closed at 7:05 p.m.

Ms. Kalmar: Board needs to consider Title 16.6.6 Basis for Decision for Special Exception Use, for example:

- *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*
- *The conservation of property values and the encouragement of the most appropriate uses of land;*
- *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population;*

Many of the neighbors have raised these issues. Is cluster development the very best use of the land with these considerations in mind? The dense development in abutter's back yards, inability to use other upland area due to access... Do the negative impacts outweigh the positive.

Mr. Melanson: Factors for consideration are subjective. The Board should thoroughly review the requested modifications.

Ms. Grinnell: The Board needs to do both.

Mr. Emerson: The modifications are more of an issue before the Board.

Mr. Anderson: As part of the Board's review, they will address each of the special exception factors.

Mr. Markley: Summarized modification requests;

- the 9.3-foot modification request is on the existing parcel;
- street frontage modification allows a reduction of roadway length;
- set back modification allows more flexibility to site reasonably sized homes on the parcels.

Deeper setbacks would force a house to be sited closer to the abutters;

Ms. Grinnell: There are a number of modification requests, and all are maximized, including lot size and street frontage.

Mr. Emerson: Modifications are maximized to reduce the footprint. This is the first cluster development that looks like a text book design. Homes along Brave Boat Harbor Road are very close together, closer than those proposed in this project.

Mr. Anderson: The proposal does not sneak under the requirement, as the open space is well beyond requirements; the proposal keeps the footprint as small as possible.

Mr. Alesse: Does not like placing a house behind an existing house, as is shown on Lot 2.

Ms. Davis: Asked all test pits, pass or fail, be shown.

Mr. Markley: A soil scientist has indicated which tests pits have passed. They will not be shown on the final plan, only the septic location.

Ms. Kalmar: The cul-de-sac request is a waiver. Per state law, dimensional modifications apply to: lot area, lot coverage, frontage and setbacks. The Board can waive an improvement, such as a cul-de-sac, if it is beneficial.

Mr. Anderson: Asking for approval at the preliminary plan stage, and will bring all required information back to the Board as well as address other issues, including building envelope in lot 2.

Discussion followed regarding special exception considerations.

Mr. Anderson: Applicant would like the opportunity to address these standards for consideration.

Ms. Wells: Requests applicant addresses the reduction of diseased hemlocks. What amount of tree coverage will be left?

Mr. Anderson: This could be a condition of approval.

Ms. Davis: It would be to the benefit of the applicant if the diseased trees were identified before building so they are not penalized for removing diseased trees, allowed by code.

Mr. Anderson: Would like to receive preliminary approval on the subdivision, with a decision on the use in the shoreland zone provided at the final plan stage.

Mr. Emerson: If the Board is not prepared to approve the plan, it would be appropriate to continue review as the applicant has been asked for additional information.

Mr. Melanson moved to continue review of the Brave Boat Harbor Conservation in light of the Board's concerns regarding modifications and the shoreland special exception considerations, and request for further information.

Ms. Kalmar seconded

Motion carried unanimously by all members present

Discussion followed regarding continuing / holding another public hearing following receipt of requested information from applicant.

Mr. Melanson amended his previous motion to include the decision to hold a second public hearing.

Ms. Kalmar seconded

Motion carried unanimously by all members present

The public hearing will be noticed accordingly.

No further action was taken.

NEW BUSINESS

Ms. Kalmar: Given the pending amendment language for Council consideration, it may be better to move this item to the next business meeting.

Mr. Melanson: The applicant and agent is present, and this should be heard.

ITEM 2 – Betty Welch Road Cluster Subdivision - Sketch Plan Review

Action: Review and schedule Site Walk. Landmark Properties, LTD., owner and Chinburg Builders, Inc., applicant, propose to develop a 24-lot single family cluster subdivision on 86.5 +/- acres. The site is identified as Tax Map 22 Lots 2A & 8 in the Residential Rural and Shoreland Overlay Zones. Agent is Jeff Clifford, P.E., Attar Engineering.

Jeff Clifford: Summarized the proposal:

- 86.5 acres; 39.5 acres upland area; 25 acres net residential acreage; 27 lots allowed; 24 lots proposed
- Water District easement through parcel
- 2700-foot greenspace at cul-de-sac
- Septic is advanced pre-treatment. Proposed pre-treatment of wastewater at each lot results in a cleaner effluent through the forced main.
- Wetlands have been flagged
- 76 acres/88% of open space
- Municipal water available
- Potential rabbit habitat, to be mapped
- No floodplain on site
- Shoreland zone on edge of property outside of developed area
- HISS mapping needed for sketch plan acceptance
- ACOE identified vernal pool outside of proposed development area
- Roadway shields development from main road
- Density is not greater than adjacent homes, but buffered with open space
- Project will go to MDEP for review

A site walk was scheduled for Wednesday, September 24 at 5:00 p.m.

8:10

OLD BUSINESS

ITEM 3 – Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements. Action: review amendment and schedule a public hearing. Proposed amendment re-defines Light-emitting diode (LED) lighting.

Mr. Mylroie: Focus on LED use; consensus was to amend the ordinance and allow for use of LED lighting in fixtures; issue now includes use of LEDs in message boards and whether this should be allowed; need clarification if LED lighting can be used in external and internal lit signage;

Discussion followed regarding where and how LED lighting can be used; colors and intensity of LED illumination; need to find amendment language defining properties/qualities of LED lighting to address color and lighting levels;

This item will be continued; no action taken. Requested staff provide technical information on LED to further discussion.

Dave Moulton: Regarding internally lit signs:

- In the 1988 sign ordinance, the intent was to not permit internally lit signs, and all signs were to be brought into conformance.
- In 1997, all existing signs, including internally lit signs, were accepted as compliant by Council, though not all were compliant.
- Internally lit signs are usually off by 6:00 p.m. during winter months, and are not used during summer when daylight is longer.
- Allowance of internally lit signs was not the intent of the sign ordinance at the time. External lighting was the intent., using goose-neck lamps, etc.

A workshop needs to be scheduled; identify specific areas of town to address internally lit signs.

Chris DiMatteo: Title 16.8.24 F was amended to allow use of LED lighting and includes industry standards; Title 16.8.24.3.F addresses glare. The CEO could direct lighting applicants to meet code requirements in 16.8.24, allowing for removal of LED language found elsewhere.

Ms. Davis: Need to remove reference to time and temperature signs in 16.8.10.2.C or other attempts to use movable signage cannot be enforced.

Ms. Davis: Will provide National Sign Association contact information to staff for assistance in drafting language.

This needs to be on the Council workshop agenda to advise of Board direction. Once contact with the Sign Association is made, a workshop can be scheduled. No action taken.

ITEM 4 –Town Code Amendment - Title 16.8.10.2 Signs – General Requirements. Action: Schedule a workshop. Discuss code amendments related to gas price signage and other message board sign standards.

There was no discussion on this item, separately from Item 3.

ITEM 5 – Quality Improvement Plan for Kittery Shore and Harbors

Action: review and make recommendation to Town Council for adoption. Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors.

Board members reviewed comments prepared by Ms. Davis;

- need page numbers in Table of Contents;
- move section 4.3 (Community Priorities) to Section 2.2;
- Ms. Kalmar: Leave 4.3 where is, but summarize 4.3 and add in 2.1, Introduction and History
- Mr. Emerson: Move 4.3 to 2.3, following assets.
- Change Rice Avenue 'Neighborhood' to 'Parcel' (2.2.D)
- Ms. Grinnell: remove reference to increased access in the Warren's vicinity (2.2B).
- 3.2.A Public Access should not be listed first as it was the last on the list of public interests, and could be removed. Ms. Kalmar: Perhaps this is not in order of priority. Ms. Grinnell: Change order in Part 3 to relate to Part 4.3 Community Priorities. Mr. Emerson: Delete 'Desired' in Part 3.2.
- Ms. Grinnell: Finds the document flawed and is not representative of discussions held. Understood this document was to be an appendix to the Comp Plan Update. Mr. Emerson: This document has to be part of the Comp Plan for us to have authority to change the document.
- Mr. Mylroie: To apply for and receive state grants for capital expenses, a plan was prepared, spearheaded by Public Works.
- Ms. Davis: This document appears to be written to apply for grants which usually means new things, but the public discussion wanted to maintain what is already in place.

- Ms. Grinnell: Offered to sit down with the Town Manager to review the document.
- Mr. Emerson: This document needs to be part of the Comp Plan and the Council and the Town Manager need to understand this. Once part of the Comp Plan, could then become a stand-alone document. However, because the Council authorized funds to produce this document, does not want to be told, after the fact, that the Board did not have the authority to make the number of changes proposed.
- Ms. Grinnell and Ms. Davis will meet with the Town Manager. This will be discussed in October, not the September 8 Council workshop agenda.

ITEM 6 – Board Member Items / Discussion

- A. Action List: Requested Board members prioritize their Action Lists and discuss as a Board.
 - Ms. Kalmar: Site work on projects before the Board is already prohibited in Title 16.10.3.3.D and can be removed. Needs to be enforced.
 - Mr. Emerson: Bulletin/memo regarding Board concerns/issues (i.e. site work) can be provided to department heads (i.e. CEO/DPW).
- B. Town Council & Planning Board Joint Workshops
 - Ms. Kalmar distributed September 8 Council workshop packet.
 - Mr. Emerson: PB Briefing Book needs to be provided to Council in October. Board review of the Briefing Book will be held at the September 25 meeting.
- C. Route 1 – BP District Quality Improvement Plan TPB Advisory Committee.
 - Mr. Mylroie: As a Planning Board project, this is a part of a \$20,000 grant to hire a consultant to implement the plan. Mr. Emerson: The Board needs to be aware of the grants and selection of consultants, etc.
 - By-pass owners/abutters need to be made aware of the September 18 MDOT hearing and the September 25 presentation to the Board, regarding the Sarah Long Bridge.
- D. Quality Improvement Overlay Zone (Kittery Crossing and Coastal Route 1 Malls)
 - Mr. Emerson: He and Susan Tuveson, Earledean Wells and Gerry Mylroie met previously on this issue, but needs to be discussed at a later date.
- E. TPB Kittery Foreside Committee per Title 16
 - Committee needs to be re-constituted. Issues in the area should be directed to the Committee.
 - Ms. Grinnell: Noted there is a central contact who will forward information without providing email addressess.
 - Terry Lockhead: This was began by residents in the Old Armory Way area; explained the email list would not be shared without their permission, and information would be forwarded to them via blind copy; should comments from the Old Armory Way residents be sent to the Planning Board and Comp Plan Committee; thought the Board would repopulate the Foreside Committee;
 - Mr. Emerson: Send to both the Board and the Comp Plan Committee. Groups such as the Foreside Committee can help the Board direct their interests, not just act as a design review group.

- Tom Ryan: If there is no standing committee, how does that affect a pending application requiring committee review within 45 days? Will the project be delayed? How will those of us opposed have an opportunity to review the project?
- Mr. Emerson: The committee is advisory and, in the absence of the committee, the Board would act. Other developments in the Foreside have been reviewed by the Board without benefit of the committee. Through public hearings, any opposition or support of a project would be heard.
- Ms. Grinnell: The Committee is extinct, and the Council would have to appoint members to the committee.

Ms. Grinnell moved to continue the meeting until 10:15 p.m.

Ms. Kalmar seconded

4 in favor; 0 against; 2 abstain (Alesse and Melanson)

F. Committee Updates

- Ms. Grinnell requested the Board appoint her to the Kittery Port Authority when elections are held in December.

ITEM 7 – Town Planner Items:

A. Town Code amendment - Outdoor Seating due by 12-31-2014

B. Other

- Council has requested input to amend the shoreland zone ordinance to remove invasive species at Fort Foster, Eagle Point, etc.
- Outdoor seating sunsets on 12/31/14. Amendment draft to Title 16 would replace Title 5, allowing for use of front yard areas for commercial seating.
- MDOT public information meeting on the Sarah Long Bridge at Kittery Community Center on 9/18 from 3-7 p.m.
- MDOT will hold a public hearing at the 9/25 Board meeting, focusing on the landing area, including intersection at Bridge Street, a park area, landscaping, etc.
- Ms. Grinnell: Asked that MDOT provide drawings at the Board meeting.
- Memorial Circle Project: \$3.4 million project; Chairman Emerson and Ms. Davis worked with MDOT in the finishing designs; a \$2 million traffic, pedestrian, bicycle circulation and landscaping plan remains to be completed. Plans will be shared with the Board.

Mr. Emerson moved to adjourn

Mr. Davis seconded

Motion carried unanimously by members present

The Kittery Planning Board meeting of August 28, 2014 adjourned at 10:10 p.m.

Submitted by Jan Fisk, Recorder, September 1, 2014

Attachment

Dear Chairman and members of the planning board.

I regret I am unable attend tonight's meeting

I argue against use of the Cluster zoning code for the Watts Plan because it permits too dense a housing development in a sensitive ecological zone. Please see the CMA report on the Watts Plan where there is a listing of all the dimensions (set backs and total lot size) that define how a developer may build on a lot. In all cases of the lots the Watts Plan dimensions have been maximally minimized. There is only a bad reason to accept this reduction, more human use contamination released downstream down a significant slope to a significant wetland with absolutely minimal buffering. The CMA report indicates there are two "flag" lots in this plan. Flag lots do not conform to code. There is no good reason to permit Flag lots here especially if as in the case here the access road runs right along the wetland boundary (100' away).

The use of cluster zoning allows for large negative impact on the two existing homes that Watts lot 2 abuts. Large negative as in quality of life and economic impact.

As I understand the place of Cluster zoning in the Town of Kittery, gained through a conversation with the town planner, it is a choice "available" to the applicant and finally the planning board to use if the benefits out way the negatives. The negatives are the effects of more dense development on the environment and the current inhabitants. Permitting this zoning in this plan allows for three non conforming lots by the original, applicable zoning which requires one acre lots. Watts names his plan " Brave Boat Harbor Conservation ." Is the conservation the remaining 7 acres of the property which is arguably not a candidate for development due access restrictions? Is this "conservation" the reason for accepting the negatives in the Cluster plan?

Planning Board Members I explore you to NOT approve the Watts Cluster Plan and instead require Watts to present a plan defined by the Rural residential code if he wishes to build on his lot.

Thank you for your consideration, John Porter. Phone contact 207-475-8188

